



POLICE DEPARTMENT

September 30, 2010

MEMORANDUM FOR: Police Commissioner

Re: Probationary Police Officer John Byron  
Tax Registry No. 941479  
Brooklyn Court Section  
Disciplinary Case No. 85534/09

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The above-named member of the Department appeared before me on February 19, 2010 and April 23, 2010, charged with the following:

1. Said Probationary Police Officer John Byron, on or about and between July 10, 2006 and April 22, 2008, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Probationary Police Officer did knowingly associate with a person or persons advocating hatred, oppression or prejudice based upon race, religion, gender or sexual orientation.

P.G. 203-10, Page 1, Paragraph 2(a) – GENERAL REGULATIONS

The Department was represented by Lisa McFadden, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Detective Richard Mecabe, Sergeant Kevin Byrnes and Sharon Hewitt as witnesses.

Detective Richard Mecabe

Detective Richard Mecabe, who is assigned to the Joint Terrorist Task Force (JTTF) Domestic Terrorism Group, recalled that in January, 2007, he was assigned to an investigation into a group called the Vinlanders and the Respondent's "name came up" during that investigation. Mecabe described the Vinlanders as a group that was organized in about 2003 to unite all the smaller white power, skinhead groups under one umbrella. Mecabe described white power as the belief that just one race, the white race, is pure. To promote their beliefs, they advocate any type of action, including violence, to get their point across.

During the course of his investigation, he received information that a splinter white power group was attempting to form in this area called the New York Empire Skinheads. The group consisted of four or five individuals who grew up together in Brooklyn and who attempted to join and fall under the Vinlanders group. Mecabe did not know what the initiation process was to join the Vinlanders other than that there was a probation period of one year. Probationary members wore a patch on their jacket. The FBI prepared a report containing intelligence information gathered from around the country on the Vinlanders and the Empire State Skinheads. The latter group started out

as the New York Empire Skinheads and later changed their name to Vinlanders when they merged with the Vinlanders and became a New York State chapter of the Vinlanders. The FBI report indicated that Vinlander members were suspected of having assaulted eight Mexicans and having raped a woman. Mecabe testified that he had no knowledge of any criminal convictions of any Vinlanders for racial hatred actions.

During his investigation, he received information that [REDACTED] was the leader of the Vinlanders and a boyfriend of Sharon Hewitt, who resides on [REDACTED], and that [REDACTED] had traveled to [REDACTED] on one weekend in November, 2007, to visit Hewitt, to meet the New York State Empire Skinheads, to bring them into the Vinlanders and to supply them with their "proby" (probationary member) patches. Mecabe testified that the Respondent's name came up when it was discovered that Hewitt had rented a room in her home to the Respondent because he needed to establish New York City residency to become a New York City Police Officer.

On March 2, 2007, Mecabe interviewed [REDACTED]. [REDACTED] expressed concern about [REDACTED] who he described as the head of the group and who he believed was hacking his computer and making threats against his girlfriend. [REDACTED] said that he and [REDACTED] had grown up together and they decided one day to form a skinhead group along with [REDACTED] and two men whose first names were named [REDACTED] and [REDACTED]. They were the original members who started out as the Empire State Skinheads and then converted to Vinlanders. [REDACTED] told Mecabe that the Respondent was a good kid and that he was not a member. [REDACTED] stated that the Respondent was not associated with them but he did occasionally hang out at the bar with them. When Mecabe was asked whether he questioned [REDACTED] regarding how much time the Respondent had spent with

these people, Mecabe answered, "Not specifically. As I said, it was just at the bar when they ran into each other."

[REDACTED] said that he and the Respondent broke away from these individuals and no longer wanted to hang out with these people after an incident at a party in Massachusetts in the fall of 2006. A group of about six people including [REDACTED], the Respondent, Hewitt, [REDACTED] and [REDACTED], went up to Massachusetts to the residence of a friend of the Respondent's named [REDACTED]. At some point during the night when the Respondent was not around because he was in a room sleeping, [REDACTED] saw [REDACTED] assault someone from Vermont and he saw [REDACTED] go into a bedroom with a female and the next morning he saw the female come out of the bedroom and she appeared to have black and blue marks on her. Later on, when the Respondent came out, she was already gone.

[REDACTED] told the Respondent about what [REDACTED] had done. On the trip back to New York, there was a heated discussion about this between [REDACTED] and [REDACTED] and the Respondent. [REDACTED] and the Respondent no longer wanted to be involved with [REDACTED]' group.

At an interview conducted in April, 2007, Mecabe questioned the Respondent about [REDACTED]. The Respondent stated that he and [REDACTED] had grown up together and that because [REDACTED] was mentally "slow," the Respondent helped him out by watching over him to make sure that people did not pick on him or bully him. When he was questioned regarding the incident in Massachusetts, the Respondent provided the names of [REDACTED], Hewitt and [REDACTED] as the people who had gone with him to the party at [REDACTED]'s house. The Respondent may also have mentioned that [REDACTED] was also in the car, but Mecabe was not "one hundred percent" certain about this. The Respondent stated that he had met these people through Hewitt because he had no contacts in New York except through

Hewitt who had introduced him to these people. The Respondent further stated that he went with them on the trip to Massachusetts because he was getting a free ride so he could visit his family. Later on, after he visited his family, he went to the party.

Mecabe testified that he traveled to [REDACTED]e, Massachusetts to interview local law enforcement officials about [REDACTED]. Mecabe spoke to Sergeant Christopher Farrell, Detective Sergeant Richard Silvestro, Detective John Doble and Police Officer James Dobbins of the [REDACTED] Police Department. Mecabe was told that [REDACTED] had been arrested once for spraying one of his neighbors in the face with mace or pepper spray during a dispute. When Mecabe asked them if they had any information about [REDACTED] being connected to or having any affiliation with white supremacist groups, they checked their computers but they found no 911 calls or complaints about [REDACTED] and his name "didn't register in their heads." However, they did produce a female neighbor of [REDACTED]'s who told Mecabe that she had witnessed [REDACTED] in front of his house saluting the Nazi flag.

On June 13, 2007, Police Officer James Dobbins told Mecabe that he had once personally observed at [REDACTED]'s residence, on the front lawn, a few individuals, waving a Nazi flag and performing a Nazi salute and that one man had a swastika tattoo on his upper arm and a flame tattoo on the top of his head. Late that same day, Mecabe interviewed [REDACTED] at his residence. [REDACTED] characterized his relationship with the Respondent as childhood friends who, while they were growing up, were very close. After high school, he found a job, whereas the Respondent went to school, but they would try to get together as much as possible. The Respondent attended the party as did [REDACTED] and [REDACTED]. [REDACTED] stated that he is the one who introduced the Respondent to

Hewitt. He met [REDACTED] about three times; once at a Renaissance Fair, and once when he came to New York City to visit the Respondent in January, 2007. They were at a bar when [REDACTED] came in.

While he was interviewing [REDACTED] he saw a flag in his closet and he asked him what kind of flag it was. [REDACTED] brought it out and showed him the flag which had the words "my honor is truth" written in German on it.

Before Mecabe interviewed [REDACTED], he obtained his criminal history which reflected that he served four years in prison after he was convicted of assault in the first degree around 2002. Mecabe interviewed [REDACTED] in November, 2007, regarding his relationship with the Respondent. [REDACTED] stated that once he found out that the Respondent was a police officer, he "didn't want nothing to do with him." [REDACTED] had met him through Hewitt and they occasionally saw each other at a bar. Mecabe interviewed [REDACTED] who told him that he and [REDACTED] had been roommates until [REDACTED] scared him and he moved out of town to Pennsylvania with his wife. [REDACTED] also met the Respondent "like the rest," occasionally at the bar. [REDACTED] stated that the only relationship between the Respondent and other members of the Vinlanders group was that occasionally they would be drinking at one of three bars. One bar was in Manhattan, one was in Brooklyn, and one was in Staten Island. [REDACTED] provided no information that the Respondent had knowledge of the beliefs of the Vinlanders. [REDACTED] stated that the Respondent was never a member. [REDACTED] opined that the Respondent should have known they were Vinlanders. [REDACTED] is currently incarcerated. Mecabe identified a photograph of two men and stated that [REDACTED] was the man depicted on the right hand side of the photo [Department's Exhibit (DX) 1].

On cross-examination, Mecabe agreed that [REDACTED] offered absolutely nothing to support his opinion that the Respondent should have known that the men at the bars were Vinlanders. Mecabe testified that [REDACTED]'s opinion appeared to be "because he [REDACTED] knows what the rest are, everybody should know." Mecabe also agreed that, based on the totality of the investigation, it was fair to say that the only information he received that the Respondent should have known what their views were was [REDACTED]'s opinion.

When Mecabe was asked whether the Vinlanders had established a chapter in New York State, he answered that the New York Empire Skinheads were under the Vinlanders as sworn "probies." Mecabe agreed that he had written in a report that JTTF was not interested in the Respondent because "it does not appear that there is a Vinlander chapter in New York."

Mecabe agreed that when [REDACTED], at his house, showed him the flag he described, the flag was inside a closet, wrapped tightly around a pole, not displayed. This flag was the only thing he saw that was suspicious. He did not see any swastikas around the house, any pictures of Adolf Hitler, or anything else that would lead to the conclusion that the house had any connection to any type of hate group.

Mecabe confirmed that the police in [REDACTED], Massachusetts, made no arrests regarding the incident where persons were allegedly saluting a flag in front of [REDACTED]'s house and there was no evidence that the Respondent was present at this incident or that he was even aware of this incident at the time it happened. Mecabe confirmed that he had contacted JTTF in the Boston area and asked them to conduct a background check of the Respondent, that they accessed material from the Boston Police intelligence unit, the

Massachusetts State Police and local police, and that no information came back that linked the Respondent to any type of hate group.

Mecabe confirmed that he had concluded that the Respondent had volunteered the information that he was a police officer to [REDACTED].

Mecabe confirmed that JTTF contacted the Internal Affairs Bureau (IAB) and requested to be allowed to interview the Respondent before IAB interviewed him. Because the Respondent was “out on a line of duty injury,” the interview took place at his house. After Mecabe introduced himself and the FBI agent who had accompanied him, the Respondent was told that they were there to interview him “in connection to Hewitt, [REDACTED], all of them.” Mecabe agreed that the Respondent was very cooperative during the whole interview and was “very straight forward about everything, not hesitant.” He answered every question he was asked and he never asked for a union delegate.

Mecabe agreed that Hewitt had told him that the Respondent had paid her rent to reside in her house, that he had dated her daughter, that he did not participate in any activities with the Vinlanders in any way, and that, other than having a few drinks with them, he had no connection to the Vinlanders. With regard to the allegations against [REDACTED], Mecabe confirmed that the investigation determined that he had no personal knowledge because he was asleep at the time of the incident and that when he later found out about the allegations against [REDACTED] he stopped hanging out with [REDACTED]. Mecabe confirmed that [REDACTED] had told him that he did not believe that the Respondent had any knowledge of his criminal past. Mecabe testified that he was aware of only one trip [REDACTED] made to Staten Island in which he went to Hewitt's house one weekend.

Mecabe confirmed that the investigation determined that the Vinlander chapter in New York State, "as fast as it started up, it broke up," and that JTTF is not aware that any Vinlanders have been accused of any crimes within New York State. Mecabe also confirmed that when the Respondent was living in Massachusetts, he met Hewitt through [REDACTED] and that he and her daughter started contacting each other through the internet. When the Respondent was accepted to the Department and needed a residence in New York City, Hewitt offered him a room for a fee and he moved in with her. Mecabe also confirmed that when he closed out his investigation on the Respondent, he wrote in his UF49 that JTTF had no interest in the Respondent and that he was not suspected of any type of criminal activity.

Mecabe also confirmed that [REDACTED]'s arrest for pepper spraying a neighbor involved a dispute about [REDACTED] lighting firecrackers and the neighbor complaining about it. [REDACTED] claimed that the neighbor had menaced him with a bat so in self defense he sprayed him with pepper spray. [REDACTED]'s arrest was not prosecuted as any type of hate crime. [REDACTED] had "one other minor arrest," but Mecabe could not recall what it was for. While he interviewed [REDACTED], [REDACTED] denied that he was ever part of any white supremacy group and [REDACTED] denied that he had marched on his front lawn or displayed Nazi regalia.

On redirect examination, Mecabe testified that his conclusion that the Vinlanders essentially no longer existed was written in a report he prepared which is dated November 21, 2007. His investigation revealed that the group was attempting to form sometime in 2006. When Mecabe was asked what the Respondent had told him about his knowledge of the assault and possible rape committed by [REDACTED], he recalled that the Respondent had said that he had slept through the night and that when he woke up the

next day, the talk inside the house was that during the night [REDACTED] had assaulted one of the people at the party who was from Vermont and that he had taken that person's girlfriend into a bedroom.

Mecabe testified that he learned that probationary members of the Vinlanders would wear a patch on their jackets. Although he has never seen one himself, he saw a depiction of such a patch on the internet site MySpace.

Sergeant Kevin Byrnes

Sergeant Kevin Byrnes, assigned to IAB Group 25, testified that in January, 2007, he was assigned to investigate the Respondent after JTTF reported to IAB that they were investigating a case involving a white supremacist group called the Vinlanders Social Club and that the Respondent was living at the residence of the girlfriend of one of their main targets, [REDACTED]. Byrnes checked Department records and ascertained that the Respondent had been appointed to the Department on July 10, 2006, and had listed as his residence as a house on [REDACTED], [REDACTED], which was owned by Hewitt. The Respondent was assigned to the First Precinct on December 27, 2006. Prior to his appointment to the Department, the Respondent had resided in [REDACTED], Massachusetts. The Respondent had listed [REDACTED], also residing at the address on [REDACTED], [REDACTED], as his emergency contact person. [REDACTED] was identified as being Hewitt's daughter. Hewitt wrote a letter in May, 2006, that the Respondent was residing at her house on [REDACTED], prior to his appointment to the Department.

As part of his investigation, Byrnes accessed information available on the internet including MySpace accounts. He described MySpace as a social networking site “where you put yourself, not necessarily your entire information, but you give yourself a screen name and you can communicate with friends, virtual friends I guess you would call it.” Typically, a MySpace account includes pictures and a list of “friends” that you have. To become a “friend” on someone’s MySpace account, “you send the person who you want to be friends with a request, and then that person has to either accept or deny your request.” Once you have been accepted as a friend on a MySpace account, you are able to send the account holder notes, pictures, postings, private messages, icons and “that sort of thing.” A MySpace account can be set up as a private one where only friends can view it or it can be open to the public where anyone can view it.

On January 26, 2007, JTTF reported to IAB that the Respondent had a MySpace account and provided a printout of the account to Byrnes. Several of his “friends” had been identified as Vinlanders and had listed as their icon the patch used by the Vinlanders Social Club. This icon was also depicted on the Vinlanders’ website as their official icon.

A 36-page printout of the Respondent's MySpace account on the internet was admitted into evidence as DX 2. Byrnes recalled that Mecabe and an FBI agent assigned to JTTF informed him that on page one, on the bottom right of the page, the icon listed for Ryan Larage is the patch for the Vinlanders Social Club probationary status. The next page depicts three patches that are Vinlander patches. One is a probationary patch and two are full-fledged member patches. Byrnes was informed by JTTF that a “friend” listed on page 16 whose screen name is “Darkcoast VSC Hates You” was identified by

JTTF as "████████," leader of the Eastern State Skinheads and a full member of the Vinlanders Social Club and that the "VSC" stands for Vinlanders Social Club.

Byrnes testified that photographs that appear after the "friends" list show, on page 1 of 2, the Respondent with █████ and, on page 1 of 3, the Respondent with Hewitt. On page 2 of 3, a "friend" whose screen name is █████ was identified by JTTF as a member of the Eastern State Skinheads and the Vinlanders probate. Byrnes did not know this person's real name since JTTF "didn't identify him by name" because "JTTF had their own investigation and they didn't share everything with us." Byrnes testified that a photograph on the next page shows █████ with his arm around the Respondent. The next photograph, on page 2 of 4, also shows █████ with the Respondent. On page 20, the person who is listed as a "friend" of the Respondent was identified by JTTF as Vinlander █████. On page 22 is another photograph of █████ and the Respondent together. Page 27 contains another reference to █████. Byrnes testified that page 29 shows a "friend patch" associated with the Vinlanders which is "spelled SHA. That's Sharon Hewitt."

Byrnes testified that on February 26, 2007, when he checked the Respondent's MySpace account, he noticed that everyone that had to do with either a Vinlander patch or that had been identified by JTTF as members of the Vinlanders were no longer on the account. On March 22, 2007, when he entered the Respondent's screen name, as he had done previously when he had successfully gained access to the Respondent's MySpace account, the website showed the account "as no longer being there" in that a message came up that said "invalid user ID." After checking his notes, Byrnes testified that March 5, 2007, was the date that he checked the Respondent's MySpace account and that

was the day that he noticed that the “friends” associated with the Vinlanders had been deleted but there other “friends” who were still listed there.

When Byrnes checked the Respondent’s site on February 26, 2007, he noticed a new “friend” who had listed himself as “NB Hooligan01.” When Byrnes accessed “NB Hooligan01,” he found a video of a man who identified himself as [REDACTED]. The video depicted him “at a rally that was basically against black pride, or black history month, and basically they were countering that.” Byrnes recalled that [REDACTED] stated in his video, “We must secure the existence of our people and the future for white children.”

Byrnes testified that his investigation included checking the background of Sharon Hewitt. When Byrnes conducted a Google search of Sharon Hewitt, he discovered an article that was posted on February 27, 2007, on the website “One People’s Project.com.” Byrnes recalled that One People’s Project described itself as an organization that exposes people who are white supremacists because One People’s Project is against white supremacists. The subject of this article was Sharon Hewitt and the article identified her as working in a court in Brooklyn and stated that “she was basically the girlfriend of the leader of the Vinlanders Social Club.”

On July 18, 2008, Byrnes checked Department records and discovered that as of April 22, 2008, the Respondent had changed his address with the Department and had moved out of Hewitt’s residence.

On cross-examination, Byrnes agreed that the “friends” that are listed on a MySpace website are “virtual friends” in that they have merely sent a message through their computer requesting to be listed on the site as a “friend” and the owner of the MySpace site has clicked yes, rather than no. Byrnes also agreed that once someone is

accepted as a “friend,” they have the opportunity to post their own photographs, insignia or symbols if they wish to do so, and to post biographical information such as where they live, their hometown, their height, their sex, and other information including messages to other friends or to the public at large.

Byrnes noted that the Respondent had posted a message to his “friends” which stated that “command is good. Already have most rookie collars in my precinct, ha ha.” (DX 2 p. 35) Byrnes agreed that the Respondent, by posting that comment, was not hiding the fact he was a police officer. Byrnes also agreed that the Respondent had never posted any type of Vinlanders patch, insignia or symbol, nor did he post any type of swastika, or upside down cross, or any symbol associated with any type of hate group. Although the site allowed the Respondent to list his favorite movies and favorite books, Byrnes agreed that the Respondent did not list anything related to hate groups. Also, although the site gave the Respondent the opportunity to list what his interests were, Byrnes agreed that the Respondent did not list anything that could be characterized as affiliated with a hate group or racially charged. Byrnes agreed that the only connection to the Vinlanders that he found on the 36 pages of the Respondent’s MySpace page were the insignias that had been posted by some of his virtual friends. Byrnes also confirmed that when he first saw these insignias, he did not know what they were until he was told by JTTF what they symbolized. Byrnes agreed that the Respondent never posted any message that could be characterized as being a message from someone affiliated with a hate group, or neo-Nazis, or white supremacy, and none of the messages that the Respondent received were made public on his website.

Byrnes agreed that the investigation started in about January, 2007, that he was the lead IAB investigator, that the Respondent was on full duty status, that there is a very high level of secrecy in these type of investigations, and that safeguards were in place to insure this investigation remained confidential, including that the command center produced an encrypted log number for this case. Byrnes testified that, to his knowledge, the security and the confidentiality of this investigation was never compromised.

Since it was not until 2008 that the Respondent's probation was extended and he was placed on modified assignment status, he had no reason to know that he was being investigated until April, 2007, when he was approached by the JTTF investigators who told him, "Don't be surprised if Internal Affairs gives you a call." Byrnes further agreed that it was in late February, 2007, that the Respondent deleted and removed from his MySpace account the names of "friends" who JTTF had identified as Vinlanders, and that it was in early March that he closed his account.

Byrnes confirmed that, as part of the investigation, 19 surveillances were conducted of the Respondent during a 12 to 14 month period by himself and by personnel from both the Chief of IAB and Group 55, which specializes in surveillance, to see if the Respondent was associating with any of the people who JTTF had identified as Vinlanders or skinheads. Some of these surveillances lasted all day long, from morning until late afternoon. During all of these 19 surveillances, the Respondent was never seen with a Vinlander or a member of any hate group or at any location or event where Vinlanders or hate groups were known to gather. Byrnes confirmed that during these 19 surveillances the Respondent basically was seen going to work, going home, and doing grocery shopping. On occasion, he went to New Jersey to visit a female friend.

Byrnes confirmed that the Respondent's MySpace page did not contain a link to the article that he had found on Hewitt through his Google search.

Byrnes explained that a field associate is someone who has graduated from the Police Academy and acts as the "eyes and ears" for IAB. During the course of his investigation, he reached out to IAB Intelligence and requested that they contact a field associate in the Respondent's command, if there was one, to ascertain if the field associate had heard any talk around the command that the Respondent might be involved with white supremacists, or if he had any racial stickers on his locker or anything like that. This request produced negative results.

As part of his investigation, Byrnes also checked the Respondent's "CPI" (Central Personnel Index) regarding his background, his disciplinary history, and his Civilian Complaint Review Board (CCRB) complaint history. He discovered no open CCRB complaints and no racial allegations in his CPI. During the Respondent's official Department interview, Byrnes asked to see all of the Respondent's tattoos. Byrnes did not see any tattoos which could be associated with a hate group or that were of a racial nature. Byrnes requested that local law enforcement officials in the Massachusetts town where the tattoo parlor that the Respondent had used was located obtain information about whether that tattoo parlor offered tattoos associated with hate groups or of a racial nature. Byrnes was told that the parlor did not. Byrnes agreed that the Respondent was very cooperative during his official Department interview and that when he was shown photographs of [REDACTED] and Hewitt he candidly volunteered that he knew them and he pointed out and identified people, including himself, in these photographs.

On redirect examination, with regard to the Respondent's MySpace pages, he recalled that he recognized the patch that was posted there as a Vinlander patch because he had accessed the Vinlanders' website and he had seen that same patch on their website. He recalled that 10 to 15 people listed on the MySpace website were identified by JTTF as being Vinlanders. He started surveillances of the Respondent immediately after he received the allegation against the Respondent in January, 2007, and they continued "for a couple of months after that."

Byrnes confirmed that JTTF interviewed Hewitt on March 2, 2007. The Respondent, during his official Department interview, told Byrnes that Hewitt had told him about her interview. The Respondent removed all of the "friends" who JTTF had identified as Vinlanders from his website on March 5, 2007, three days after JTTF's interview with Hewitt. The Respondent closed his MySpace website on March 22, 2007. The copy of the Respondent's MySpace website that is evidence (DX 2) was printed out by JTTF on January 4, 2007.

Sharon Hewitt

Sharon Hewitt, who is employed as a Court Assistant by the New York State Courts, testified that she has known the Respondent about five years and that she met him in Boston through a mutual acquaintance, [REDACTED], who introduced her to the Respondent at a punk rock concert in March, 2005. The Respondent moved to New York City in 2006. He was already living in the city when she found out that he was here. She had a conversation about him moving into her residence. He rented a room inside her house

and moved in there in June or July 2006. He dated her daughter for a few months from the summer of 2006 into the fall.

Hewitt recalled that she had “a personal relationship” with [REDACTED] which began when they started chatting online during 2006. They met in person in December, 2006. [REDACTED] came to her home just before Christmas, 2006. The Respondent was visiting his parents at that time.

She first became aware of the existence of the Vinlanders online. J [REDACTED] was “thought of sort of as their leader.” When she was asked what the Vinlanders stood for and what they did, she responded, “They didn’t do much of anything except drink and party. Basically they stated that they stand for pro-Americanism.” Hewitt testified that she had repeatedly asserted that her interest in [REDACTED] had nothing to do with his politics. When she was asked if she was also familiar with a group known as the Eastern State Skinheads or the Empire State Skinheads, Hewitt testified, “That was something that never even came to pass. That’s something that a couple of guys in New York were talking about forming a skinhead group but it never came to be actually anything.” The “guys” were [REDACTED], [REDACTED], and “some other kid that hung around named [REDACTED].” She met [REDACTED] when she was introduced to him by [REDACTED] who lives in New Jersey and is a member of the Vinlanders. She met [REDACTED] through [REDACTED], although her last contact with [REDACTED] was a long time ago. She knew [REDACTED] from late 2006 to early in 2007. [REDACTED] was friends with the two New Jersey Vinlanders that she knew, [REDACTED] and [REDACTED], but he was never accepted as a Vinlander.

Hewitt testified that she had a “big falling out with everybody” in November, 2006, and she had no knowledge of their intentions or anything they did after that.

Hewitt recalled that [REDACTED]’ only contact with the Respondent was when “they passed each other in the house and Officer Byron did come to the bar occasionally when we were out drinking.” The Respondent’s only contact with [REDACTED] and [REDACTED] was “at the bar.”

[REDACTED] wore a patch on a fairly regular basis to indicate that he was a member of the Vinlanders, but Hewitt did not know whether the Respondent ever saw him when he was wearing his patch.

Hewitt recalled that she met [REDACTED] “through a guy that I know in Massachusetts through another acquaintance” in the fall of 2005 at either a party or a show in Massachusetts. [REDACTED] had met [REDACTED] and [REDACTED] but she did not know how well he knew them. In the summer of 2006, she went to the Kings James Fair, with the Respondent and her son. They met [REDACTED] there because it was in Massachusetts. In November, 2007, she went with the Respondent to a party at [REDACTED]’s home.

[REDACTED] probably was also at the party.

Hewitt testified that Darryl Jenkins, a reporter for “One People’s Project” wrote an article about her that was “posted all over the internet” on the “One People’s Project” website, in which he alleged that she “was a gang member, which I am not” and that she might be involved in criminal activity “and they weren’t sure if my employer, the State of New York or Judge Pearl, who I work specifically for, were aware of any of my activities.” The article also stated that she had dated [REDACTED], that he was associated with the Vinlanders group, and it alleged that the Vinlanders were essentially a white supremacist, hate crimes type group. She discussed this article with the Respondent after the article was posted on the internet. She told the Respondent that she “couldn’t believe that this guy had posted all these lies about me on the internet and posted my home

address, where my children live, on the internet." There is a photograph in the article of her with the Respondent but he is not mentioned in the article. The Respondent had not seen the article prior to her telling him about it on the phone shortly after the article was posted on the internet at the end of February, 2007. Hewitt learned about the posting when she was called by a reporter "who ended up writing an article for the New York Post. I believe he called me at my job on March 1, 2007, to ask me if I knew about the stuff that was on the internet." [The article was admitted into evidence as DX 3].

Hewitt was interviewed by Mecabe in early March, 2007. He discussed [REDACTED]

[REDACTED], [REDACTED] and the Respondent. She was asked if she had discussed this interview with the Respondent. She answered, "I am not sure. I don't think so." She had an account with MySpace in late 2006 or early 2007 and she knew that members of the Vinlanders were also members on MySpace.

Hewitt was shown the 36-page printout of the Respondent's former MySpace account on the internet (DX 2). She stated that the patch on the bottom right-hand side of the first page "Ryan the Rage" is a Vinlanders patch, and that the three patches on the second page were also Vinlander patches, as was the patch on Page 3. "Ryan the Rage" was a friend of [REDACTED]'s. She had met him but she did not know him. He was not a member of the Vinlanders when she was involved with [REDACTED]. She stated that in the photo on Page 11 she recognized the Respondent and [REDACTED], and that in the photo on Page 13 she recognized the Respondent [REDACTED], [REDACTED]" [REDACTED], and herself. She does not know [REDACTED]'s last name. She stated that the "██████████" listed on Page 14 is actually [REDACTED] who was never a member of the Vinlanders. The photo on Page 16 appeared to her to have been taken at the Kettle Black, a bar in Brooklyn. In the photo

she could only “make out this kid [REDACTED], that used to hang out with [REDACTED], in the front” and the Respondent. She did not know when this photograph was taken.

The Respondent did not move out of her home until sometime after he had begun performing full duty as a police officer. She recalled that he moved out after he “was injured, he was thrown down the stairs by a street vendor and he was still living with me at that time.” She could not recall the exact time frame because she “had two surgeries during the summer of 2006” and she “was on a lot of pain medication” so “some of my memories are not exactly clear so I am doing the best I can with what I can remember.”

On cross-examination, Hewitt confirmed that she first learned about the Vinlanders and their patches through the internet. Hewitt also confirmed that the Respondent was in the Police Academy at the point in time when alleged Vinlanders came to her house to party and that his contact with them was “minimal.” He would say hello to them, but he did not spend the night conversing with them. When he lived with her, he would come home and do his homework. On occasion, he went to the bar and had a few drinks with people that were allegedly Vinlanders. He would also go to the bar with just Hewitt and her co-workers from the court. She does not know what the Respondent knew about the Vinlanders and their beliefs. When alleged Vinlanders came to her house to party they would merely listen to punk rock and Irish music and have a few drinks. The alleged Vinlanders never said or did anything in her presence at her house or at the bar that indicated that they believed in white power or white supremacy or that they were part of a hate group.

Hewitt confirmed that when she telephoned the Respondent about the article, she was very upset and that she told him that the article contained numerous lies about her and also contained her address and that is why she was upset.

On redirect examination, Hewitt testified that she does not believe that she discussed the allegations made against [REDACTED] in the article with the Respondent.

#### The Respondent's Case

The Respondent testified in his own behalf.

#### The Respondent

The Respondent, who is currently assigned to modified duties at Brooklyn Central Booking, a unit within the Criminal Justice Bureau, testified that he was raised in Cape Cod and Boston, Massachusetts. He has a Bachelor's degree in criminal justice. He was appointed to the Department on July 10, 2006. He is still on probation because his entry probation was extended as a result of the investigation that led to the charges that are the subject of this trial.

He described [REDACTED] as someone who was a good friend, who he has known since high school, and who "was almost like an idiot" because he may have had "a mild form of autism." Although "he was almost a genius when it came to math and science," he "lacked social skills." The Respondent recalled that he "looked after him in high school" because "he was picked on quite a lot." They had a common interest in punk rock music. The Respondent asserted that he never had any knowledge that [REDACTED] was a neo-Nazi or preached white power. The Respondent testified that he plays the drums in "a lot of punk

bands" and that he also plays "everything from jazz and big band stuff" to traditional Irish music.

[REDACTED] connected him with Hewitt. It was possible that he had introduced them at a "Dropkick Murphy" concert in Massachusetts. He moved into Hewitt's house just before he commenced classes at the Police Academy. While he was living with Hewitt, "she had friends over every now and then." He described Hewitt's friends as "outcast types" who wore tattoos and leather jackets and biker types who drove motorcycles. He acknowledged that he may have heard the name Vinlanders "thrown around" when Hewitt's friends were at her house but it "wasn't something I was concerned with at the time" because he "thought it was just another biker group or gang or I don't know." When he first heard the name Vinlanders he had no idea what they stood for. He did not spend a lot of time with them because he had a very busy schedule in the Police Academy and he also had assigned homework during the week and over the weekends as well.

None of Hewitt's friends ever indicated to him that they believed in white supremacy or Nazism or anything related to a hate groups, they did not wear Nazi tattoos or Nazi symbols on their jackets and they did not exchange Nazi salutes. Mainly, they drank a lot of beer. Hewitt "didn't have them over that often." He also saw them at the bar "maybe a couple times." He believed that the Vinlanders were just another group of guys that liked to ride motorcycles.

He accepted people who wanted to be cyber friends on his MySpace page because "it's like a popularity contest type thing." He "had plenty of people on there, there were strangers even, like good looking girls or bands, all kinds of things like that." He accepted as friends some of the people that he met through Hewitt. He chose "nasty hip

check" as his screen name on MySpace because he used to play hockey. He stated that if he had put anything on his MySpace page that would tell anyone looking at it that he was a police officer, such as how many "collars" he had made, "it was a rookie mistake" because "it's frowned upon" and "the older guys always kind of allude to the fact that you should shut up about what you do for a living."

He was aware that Hewitt told her friends that he was at the Police Academy and that he was going to be a police officer. After he graduated from the Police Academy, he was assigned to the first Precinct in lower Manhattan. In April, 2007, he broke his ankle while on duty when he was pushed down a staircase by a vendor on Canal Street and Broadway while he was taking police action.

He recalled that Hewitt had called him about an article that was written about her. She was "hysterical crying" and told him, "Oh my God, I am going to lose my job" because "these people are telling lies about me." Hewitt never told him that any law enforcement agents had asked her questions about the Vinlanders. He first learned that she had been approached when he was officially interviewed and when the FBI contacted him.

He recalled that when Mecabe and a special agent from the FBI came to his residence and interviewed him on his front porch, he, at first, "thought it was a wellness check" regarding his line of duty injury. When they asked him how long it had been since he last saw [REDACTED], he told them that he occasionally saw him when he went home to visit his parents. They had told him that [REDACTED] had been arrested in a dispute with a neighbor and that they were suspicious that [REDACTED] was involved in "some white

supremacist stuff." This was the first time that he had ever heard any type of allegation like that against [REDACTED]. They also asked him about Hewitt's connection to [REDACTED]

He decided to take down his MySpace page because Hewitt had indicated that she "was in trouble with her job" because "the guys that she was hanging out with were getting in trouble for a reason that she wasn't allowed to talk to me about." Since some of the people that she was referring to may have been cyber friends on his MySpace page, he filtered Hewitt's friends off of his page and "cleaned up the website" in order "to get rid of maybe 12 of them I had met or they had friend requested me because they knew that we lived together." A few weeks later, he closed the site altogether and used a Facebook site because "at least 90 percent" of the cyber friends on his MySpace page were people he did not know very well and he had no idea what their beliefs were.

Mecabe told him that [REDACTED] was "a bad egg, real bad kid, trouble maker." After he was interviewed by Mecabe, he stopped associating with [REDACTED] and [REDACTED]. He testified that the photos on his MySpace page of him and [REDACTED] were posted by [REDACTED] after one night at Kettle Black. He first learned that the Vinlanders were considered a white supremacist group when he was approached by Mecabe and the FBI special agent. After that interview, he never associated with anybody that he thought could possibly be a Vinlander.

On cross-examination, the Respondent testified that there were many people on his MySpace page that he really did not know. He had met [REDACTED] at the Kettle Black bar in Brooklyn. He identified photos of himself with Hewitt, [REDACTED] and [REDACTED]. He may have put a caption under one photograph, where he is seen shirtless, that reads "my friends love me." He identified photos of himself with [REDACTED], Hewitt's daughter, her

sons [REDACTED] and [REDACTED] and himself pumpkin picking. The photos were posted on his MySpace page. He recalled that he also posted photos his father, his dog back in Massachusetts and "things like that." Visitors to his MySpace page posted different logos or pictures of themselves to identify them. At one point there were 500 people on the website. He might have seen the patch that is shown on the website on the clothing of [REDACTED] when he was out with having drinks with him. He never asked anyone what the patch stood for or what group it was that they belonged to and he never checked on the internet to see what this patch was.

He first became aware of what the Vinlanders club was about when he was approached by Mecabe and a special agent. He had become aware of the existence of the club while he was at the Police Academy, but not of what their beliefs were. He was aware of the patches but he did not know they were called Vinlanders until Mecabe told him. At the Respondent's official interview on November 5, 2008, he was asked, "When did you first become aware of the existence of the Vinlanders Social Club or the Eastern Skinheads? He answered: "While I was at the Police Academy. I don't have a date for that or anything like that." He was then asked how he had become aware and he answered, "Because...some of them wore jackets with patches and things like that on them." He was only told that the social club was a "patriotic thing." He testified that at his official Department interview he had answered that for all he knew they "could have been" white supremacists only because that was what Mecabe and the special agent had told him the Vinlanders were when they approached him in front of his residence and told him everything about the club, and Hewitt's friends, and their beliefs.

He recalled that at his official interview on November 5, 2008, when he was asked if he was aware that these people had these beliefs, he had answered, "Yes, I am aware now." He testified that at this official interview he had a hard time remembering when Mecabe and the special agent had approached him and he initially thought that he was still in the Police Academy when they approached him but that it was actually in March, 2007, after he graduated from the Police Academy in January, 2007. At the time that he was at the Police Academy, he was not aware that [REDACTED]'s home was considered to be a white supremacist location. When Mecabe came to his house with the special agent, they informed him that [REDACTED] was now allegedly a white supremacist. At his official interview, he had stated that [REDACTED] had "started getting into some funny stuff. We really didn't talk about that kind of stuff though." At his official interview, he had also stated that [REDACTED] had "started making some...poor choices when it came to making friends." He did not know that [REDACTED] had been observed chanting white supremacist slogans and saluting a Nazi flag in front of his residence until Mecabe and the special agent told him.

He only saw [REDACTED] twice, once at a bar in Brooklyn and the other time was time was at a party. He stopped socializing with Hewitt's friends because "they were big drinkers, rebel rousing, always fighting with each other and arguing. It's just not something that you can be around when you are a police officer." He became aware that Salas had a criminal conviction after Mecabe told him. He closed down the website after Hewitt told him that there was "some big scandal about her with some kind of website." He did not see the article that was posted about Hewitt until his official Department interview on November 5, 2008.

FINDINGS & ANALYSIS

It is charged that between July 10, 2006 and April 22, 2008,<sup>1</sup> the Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he “did knowingly associate with a person or persons advocating hatred, oppression or prejudice based upon race, religion, gender or sexual orientation.”

This case hinges on the knowledge element of the charge. The question is whether the Department presented sufficient proof, that at the time the Respondent engaged in purely social interactions with persons JTTF had identified as Vinlanders, he was aware that he was associating with persons who advocated hatred, oppression or prejudice based upon race, religion, gender or sexual orientation. After carefully examining the testimony and the evidence presented, I find that this question must be answered in the negative.

Department witness Hewitt testified that she never heard [REDACTED] or anyone else speak about the Vinlanders, white supremacy, their racial beliefs or any related topic in the Respondent’s presence. In addition, although Hewitt told the Respondent how upset she was about the web article that had been written about her (DX 3), a conversation that the Respondent candidly acknowledged at his official Department interview, no evidence was offered by the Department that the Respondent read this article.

Mecabe testified that when he and the FBI agent who worked with him at JTTF interviewed the Respondent in front of his residence, the Respondent candidly

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<sup>1</sup> Although this charge asserts that the Respondent associated with Vinlanders until April 22, 2008, Detective Mecabe wrote in a November 21, 2007 report that the Vinlanders essentially no longer existed.

acknowledged his childhood friendship with [REDACTED], that he had rented a room from Hewitt and that he met [REDACTED] and [REDACTED] and socialized at a bar with them. Mecabe described that the Respondent was very cooperative during the entire interview, that he answered every question he was asked, that he never asked for a union delegate, and that he was "very straight forward about everything, not hesitant." If the Respondent was conscious that his associations with [REDACTED] others mentioned by Mecabe were improper because he was aware that they advocated white supremacy, it is likely that he would have tried to distance himself from them or that he would have refused to answer their questions about his contacts with them until he had consulted with his union representative or legal counsel. That he candidly acknowledged his social contacts with these individuals and did not refuse to answer any question he was asked, constitutes strong evidence of his lack of knowledge of their beliefs and their advocacy activities.<sup>2</sup>

As to the specific social contacts that the Department offered to prove that the Respondent "did knowingly associate" with [REDACTED] and Vinlanders, in [REDACTED]'s case they consisted of one party at [REDACTED]'s house and one brief visit by [REDACTED] to New York, and as to identified Vinlanders they consisted of one trip to [REDACTED]'s house, bumping into each other occasionally at Hewitt's residence, and going with Hewitt to a bar on a few occasions. All of the 19 surveillances conducted of the Respondent, some of which lasted all day, produced negative results in that the Respondent was never seen with a Vinlander or a member of any hate group or at any location or event where Vinlanders or hate groups were known to gather.

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<sup>2</sup> The Department's proof regarding how long the Vinlanders and the Empire State Skinheads existed and what advocacy activities they engaged in was rather sketchy and consisted mainly of hearsay, some of it, such as the woman who claimed to have seen Dugan saluting a Nazi flag, unattributed.

I find it significant that the only person Mecabe interviewed who told him that the Respondent should have known the racial beliefs of the men he was drinking with at the bar was [REDACTED], and, on cross-examination, Mecabe agreed that [REDACTED] offered absolutely nothing to support his opinion that the Respondent should have known that the men at the bar were white supremacists.

With regards to the persons who the Respondent accepted as cyber friends on his MySpace page, I find it significant that the 36-page printout of the Respondent's MySpace account offered in evidence by the Department (DX 2) contains no comments by the Respondent or any of his cyber friends which could be characterized as advocating hatred, oppression or prejudice based upon race, religion, gender or sexual orientation. Although Byrnes noted that a cyber friend who had listed himself on the Respondent's MySpace page under the tag name of "NB Hooligan01" had produced a white supremacy video, Byrnes had to access the "NB Hooligan01" website to discover and view this video.

Similarly, the red-white-and-blue Vinlanders' patches which were attached to the Respondent's MySpace page by some of his cyber friends do not contain racial messages or anything else that would identify them as patches used by a group advocating hatred, oppression or prejudice based upon race, religion, gender or sexual orientation. They do not even contain the word "Vinlander." Byrnes did not know what the patches signified until JTTF told him. Clearly, the Respondent could and should have monitored who he was accepting as cyber friends more carefully, but his failure to do so does not establish that he was aware of his cyber friends' beliefs and activities.

Also, as Byrnes noted, the Respondent posted a message to his cyber friends in which he clearly indicated that he was a police officer ("Command is good. Already have most rookie collars in my precinct, ha ha." DX 2 p. 35). If the Respondent knew that he was communicating with white supremacists, it is unlikely that he would have identified himself as a police officer.

It is clear that once the Respondent learned that certain of the tag names he had accepted as cyber friends his MySpace account had been identified as Vinlanders, the Respondent proceeded to delete them as friends from his MySpace account. Byrnes testified that the Respondent removed all of the cyber friends who JTTF had identified as Vinlanders from his website after JTTF's interview with Hewitt and he closed his MySpace website on March 22, 2007.

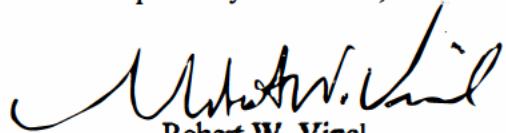
Finally, although the Assistant Department Advocate (the Advocate) asserted that the Respondent made an admission at his November 5, 2008 official Department interview that he was aware that the people he was associating with could have been white supremacists, the Respondent testified that the answers he provided at his official Department interview in response to questions about what he knew about the Vinlanders' beliefs were based solely on the information that had been provided to him by Mecabe and the FBI special agent in April, 2007. The Advocate did not successfully refute the Respondent's claim that Mecabe was the only source of his information about the Vinlanders' beliefs or his claim that his official interview interrogators had never asked him how and when he had learned about the Vinlanders' beliefs.

Since the Department presented no witness who could establish that the Respondent was aware that he was socially interacting with persons who advocated

hatred, oppression or prejudice based upon race, religion, gender or sexual orientation, before Mecabe and the FBI agent told him about [REDACTED]'s activities and the Vinlanders' beliefs, the Department's case rests on the proposition that because the Respondent had some social contact with his old friend [REDACTED] prior to April, 2007 and with persons who were Vinlanders, he must have known about their beliefs and their activities. I cannot subscribe to this position.

In conclusion, because the Department did not present sufficient evidence which proves that the Respondent was aware that he was socially interacting with persons who advocated hatred, oppression or prejudice based upon race, religion, gender or sexual orientation, I find the Respondent Not Guilty.

Respectfully submitted,

  
Robert W. Vinal  
Assistant Deputy Commissioner - Trials

